212. In the *Notice*, the Commission also requested comment on whether the satellite licensing process itself might tend to discourage parties from applying for a license merely to sell it. First, the Commission proposed requiring the purchaser to meet the milestones in the original license, which would also serve to discourage speculation because the license would lose value as the milestone date drew near unless the licensee had made sufficient progress in constructing its satellite.[487] In addition, the Commission noted that preparing a satellite license application and filing it with the Commission is a technically complex and costly undertaking, and that those costs might help to limit purely speculative applications.[488] Based on all these considerations, we proposed to eliminate the anti-trafficking rule and invited comment on whether we had struck the correct balance between the competing goals of preventing unjust enrichment and expediting service to the public.[489]

213. *Pleadings*. Some parties maintain that eliminating the anti-trafficking rule would increase the incentives for filing speculative applications.[490] Inmarsat asserts that if there is an increase in speculation, satellite operators would face an increase in costs that could be passed on to consumers.[491] Inmarsat claims further that eliminating the anti-trafficking rule would delay service to the public.[492] Hughes maintains that it is unreasonable to make a public interest determination that an applicant is qualified to hold a license, and then allow it to sell the license to another party without any Commission review.[493]

214. Alternatively, ICO supports elimination of the anti-trafficking rule, arguing that it would be consistent with the Commission's efforts to allow secondary markets to develop for spectrum in other services.[494] ICO argues that the Commission has relaxed its anti-trafficking rules for other Commission licensees, and that there is no reason to hold satellite licensees to a higher standard.[495] ICO maintains that implementing reasonable milestone requirements would

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487 *Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 116).

488 *Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 117).

489 *Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 117).

490 Hughes Comments at 28; SES Americom Comments at 5; Inmarsat Comments at 11; SES Americom Reply at 12.

491 Inmarsat Comments at 11.

492 Inmarsat Comments at 11.

493 Hughes Comments at 49-50.

494 ICO Reply at 2-3, *citing* Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, *Policy Statement*, 15 FCC Rcd 24178, 24181 (para. 10) (2000) (*Spectrum Secondary Markets Policy Statement*); Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking*, WT Docket No. 00-230, 15 FCC Rcd 24203 (para. 10) (2000) (*Spectrum Secondary Markets NPRM*).

495 ICO Reply at 3, *citing*, *e.g.*, Amendment of Section 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control), *Report and Order*, BC Docket No. 81-897, FCC 82-519, 52 Rad. Reg. 2d 1081, 1086 (para. 21) (1982) (*Broadcast Trafficking Report and Order*) (elimination of "three-year rule" for broadcast stations).

provide adequate protection against unjust enrichment.[496] ICO disagrees that the anti-trafficking rule is needed to discourage speculation.[497] Finally, ICO points out that allowing sales of licenses can help mitigate risk and so helps attract investors.[498] Teledesic argues that, in the past, anti-trafficking rules have generally not discouraged speculation in licenses, but rather added unnecessary complication to legitimate business transactions.[499]

215. *Discussion.* We eliminate the anti-trafficking policy for satellite licenses. We conclude that, while preventing unjust enrichment and expediting service to the public are both important policy goals, expediting service to the public warrants more weight. The issue raised in the *Notice* is *not* whether eliminating the restriction on satellite license sales might increase the incentives for speculation. The Commission recognized that eliminating the rule would increase the incentives for speculation.[500] Rather, the relevant issue is whether the public interest benefits of eliminating the satellite anti-trafficking rule outweigh the benefits of keeping the rule.[501] For reasons discussed below, we find that the benefits of keeping the anti-trafficking rule are relatively small given the other safeguards against speculation we adopt in this Order, while the benefits of eliminating the rule are fairly substantial. Therefore, we are adopting several safeguards against speculation in this Order below. In addition, we retain our authority to review transfer of control applications to determine whether the proposed transfer will further the public interest, convenience, and necessity.

216. Moreover, the licensing procedures we adopt today should discourage speculation by themselves to some extent. Because we will require buyers to meet the milestone schedule in the original license, the value of the license will decrease rapidly as each milestone deadline approaches. Because milestone enforcement will reduce the profits a speculator can make from its sale, it will discourage some speculation. In addition, we use a first-come, first-served procedure for GSO-like satellites because awarding licenses to the first qualified applicant, by itself, will not preclude us from licensing other applicants at other orbit locations. Thus, in cases in which there are other orbit locations available, applicants are unlikely to purchase a license from a "speculator" because they can simply apply for one.[502] Also, as the Commission observed in the *Notice*, there are significant costs associated with filing a satellite application.[503] These costs include the technical analyses required to prepare a satellite application, the application

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496 ICO Reply at 3-4.

497 ICO Reply at 4.

498 ICO Reply at 4-5.

499 Teledesic Comments at 35-38; Teledesic Reply at 28-30.

500 *Space Station Reform NPRM*, 17 FCC Rcd at 3884 (para. 110).

501 *Space Station Reform NPRM*, 17 FCC Rcd at 3884-85 (paras. 111-15).

502 We realize that a GSO-like applicant may have an incentive to purchase a license from a speculator rather than apply for another location with the Commission in cases where its business plans require a specific orbit location. In most cases, however, orbit locations close to each other in the GSO orbit are close substitutes for each other, so that there will be less incentive to purchase a license from a speculator when another close orbit location is available.

503 *Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 117).

fee,[504] annual regulatory fees,[505] and ITU cost recovery fees. Finally, we adopt other safeguards against speculation in this Order, such as a bond requirement, and limits on the number of pending applications and unbuilt satellites a licensee may have in each frequency band. Further, our procedure for NGSO-like satellite systems, where we divide the available spectrum equally among the qualified applicants in a processing round, also establishes disincentives against speculative applications. Because the speculator's spectrum rights would be redistributed to the other licensees if and when the speculator misses the first milestone, other licensees have some incentive to acquire spectrum through this process rather than to buy spectrum rights from the speculator.[506] Although none of these factors by themselves would be sufficient to prevent speculation, they provide enough protection when combined with the speculation safeguards discussed below[507] to make the anti-trafficking rule for satellites superfluous.

217. Thus, while the benefits of retaining the current restriction on sales of satellite licenses are relatively small, the benefits of eliminating the restriction are substantial. Eliminating the restriction on sales expedites provision of satellite service to the public by facilitating the transfer of licenses in the secondary market to those parties that have the greatest incentive and ability to construct a satellite system within the required time frame.[508] In addition, easing unnecessary restrictions on post-licensing transactions will enable satellite spectrum to move more efficiently to its highest and best use without the need for relicensing procedures. It helps satellite licensees mitigate their business risk, and so encourages investment in the satellite industry.[509]

218. In addition, we agree with ICO that eliminating the restriction on sales of satellite services could help a secondary market to develop for satellite capacity.[510] Secondary markets

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504 The Commission listed the satellite application fees in the *Notice*, but those fees have since been increased. The application fees are now $98,645 for each GSO space station, and $339,730 for each NGSO satellite system. Amendment of the Schedule of Application Fees Set Forth in Section 1.1102 through 1.1107 of the Commission's Rules, *Order*, GEN Docket No. 86-285, 17 FCC Rcd 13948, 13982-83 (2002). These fees took effect on December 5, 2002. *See* Notice of Publication in the Federal Register and Announcement of Effective Date of Schedule of Charges for Application Fees, *Public Notice*, DA 02-3080 (released Nov. 7, 2002).

505 Currently, the regulatory fee is $99,700 per space station for GSO licensees and $103,200 per licensed NGSO satellite system for NGSO licensees. 47 C.F.R. § 1.1156. The Commission has proposed increasing these fees to $115,625 and $108,375, respectively. Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice Of Proposed* Rulemaking, MD Docket No. 03-83, FCC 03-64 (released Mar. 26, 2003).

506 In this Section below, we adopt the proposal in the *Space Station Reform NPRM* to maintain the current milestone schedule when a license is sold. *See also Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 116).

507 Section VII.E.

508 *See Space Station Reform NPRM*, 17 FCC Rcd at 3884 (para. 111). We note that this approach is consistent with the recommendations of the Spectrum Policy Task Force Report. SPTF Report at 38-39.

509 *See Space Station Reform NPRM*, 17 FCC Rcd at 3884-85 (paras. 112-13).

510 ICO Reply at 2-3.

can provide benefits to satellite users and consumers not only through the outright transfer of licenses, but also through partial redistribution or transfer of unused spectrum. By encouraging satellite licensees to sell unused spectrum to other parties willing to put the spectrum into use, we allow parties flexibility to transfer satellite bandwidth to more efficient uses in response to changing market conditions and consumer demands, and we allow marketplace forces to determine which companies succeed.[511] Furthermore, as ICO notes, we have relaxed our restrictions on sales of other licenses for this reason.[512] For example, we have recently eliminated anti-trafficking restrictions in the cellular service,[513] and in most other terrestrial services, we allow the full or partial transfer of licenses without holding requirements. Similarly, we abolished our three-year holding rule[514] for broadcast licenses 20 years ago, concluding that the public interest is usually best served by allowing station sales transactions to be regulated by marketplace forces.[515] We also held that our previous concerns about speculation in broadcast licenses were outweighed by the public interest benefits of removing restrictions on sales of licenses.[516] We find this reasoning as persuasive today as it was in 1982.[517]

219. We also note that there are other factors that weigh in favor of eliminating the restriction on sales of licenses. First, as we noted above, eliminating the restriction greatly facilitates post-licensing negotiations among licensees.[518] Given that we adopt procedures in this proceeding to expedite satellite licensing by avoiding the need for pre-licensing negotiations, it is important that we do not discourage post-licensing negotiations. In light of those measures, the restriction on sales of licenses will not be needed as much as it was in the past.

220. As we noted above, the relevant issue is whether the public interest benefits of eliminating the satellite anti-trafficking rule outweigh the benefits of keeping the rule.[519]

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511 *Spectrum Secondary Markets Policy Statement*, 15 FCC Rcd at 24182 (para. 11).

512 ICO Reply at 3.

513 Year 2000 Biennial Regulatory Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, *Report and Order*, WT Docket No. 01-108, 17 FCC Rcd 18401, 18436-38 (paras. 70-74) (2002).

514 The three-year holding rule prohibited transfers of broadcast licenses unless the licensee had held the license for a minimum of three years.

515 *Broadcast Trafficking Report and Order*, 52 Rad. Reg. 2d at 1087 (para. 23).

516 *Broadcast Trafficking Report and Order*, 52 Rad. Reg. 2d at 1087-88 (paras. 24-25).

517 Courts have also upheld past Commission efforts to replace government regulation with reliance on market forces in appropriate circumstances. FCC v. WNCN Listeners Guild, 450 U.S. 582 (1981) (affirming Commission conclusion that promoting diversity in broadcasting through market forces and competition among broadcasters is in the public interest); WOLD Communications, Inc., v. FCC, 735 F.2d 1465, 1475 (D.C. Cir., 1984) ("But the public interest touchstone of the Communications Act, beyond question, permits the FCC to allow the market place to substitute for direct Commission regulation in appropriate circumstances").

518 Section V.C.2.

519 *Space Station Reform NPRM*, 17 FCC Rcd at 3884-85 (paras. 111-15).

Therefore, parties arguing merely that the anti-trafficking rule is needed to discourage speculation do not provide a sufficient basis for retaining the rule.[520] Of the parties arguing in favor of the anti-trafficking rule, only Inmarsat comments on whether the benefits of the restriction outweigh the benefits of removing the restriction. Specifically, Inmarsat asserts that removing the restriction might cause delay in provision of satellite services to the public, and might increase the cost of satellite services.[521] We disagree with both of Inmarsat's assertions. We disagree that removing the restriction will delay provision of satellite services to the public. In fact, we conclude that eliminating the restriction on satellite license sales on balance should expedite service to the public. As we noted in the *Notice*, the purchaser will often be able to implement the project when the original licensee finds it cannot.[522] In addition, because we require buyers to meet the milestone schedule in the original license, the sale of a license should not delay service to the public.[523] We also disagree with Inmarsat that removing the restriction will result in any significant increase in the cost of satellite services. The Commission observed in the *Notice* that it can cost millions of dollars to design, build, and launch a satellite system.[524] If speculators were able to sell the licenses at excessive prices, the excessive price paid becomes part of the operator's fixed cost, and would not affect the price of satellite services in a competitive market, where prices are determined by the marginal cost of the highest cost operator rather than fixed costs.

221. Finally, contrary to Hughes's assertion, the rule revisions we adopt here will not allow licensees to sell their licenses without Commission review.[525] Section 310(d) of the Act requires prior Commission review of all transfers of licenses,[526] and Section 25.119(a) of the Commission's rules prohibits transfers of satellite licenses unless the Commission determines that the public interest, convenience, and necessity will be served thereby.[527] The Commission did not propose any revision to that requirement, nor do we adopt any such revision here. Thus, by eliminating the anti-trafficking rule, we will no longer review each satellite transfer of control application to determine whether the proposed transaction is the sale of a bare license for profit, but we will continue to review transfer of control applications to determine whether the proposed transaction furthers the public interest, convenience, and necessity. As part of that determination, we will consider whether the transferee is qualified to hold a satellite license, and whether the proposed transaction is likely to facilitate provision of service to the public. We also note that the

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520 Hughes Comments at 28; SES Americom Comments at 5; SES Americom Reply at 12.

521 Inmarsat Comments at 11.

522 *See Space Station Reform NPRM*, 17 FCC Rcd at 3885 (para. 114).

523 *Space Station Reform NPRM*, 17 FCC Rcd at 3884 (para. 111), *citing MCI Order*, 2 FCC Rcd at 234 (para. 7); *First Columbia Milestone Order*, 15 FCC Rcd at 15571 n.35; Columbia Communications Corporation, *Memorandum Opinion and Order*, 15 FCC Rcd 16496, 16500-01 (para. 12) (Int'l Bur. 2000) (*Second Columbia Milestone Order*), *PanAmSat Ka-band License Cancellation Review Order*, 16 FCC Rcd at 11538 (para. 13).

524 *Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 117).

525 Hughes Comments at 49-50.

526 47 U.S.C. § 310(d).

527 47 C.F.R. § 25.119(a).

Commission's public interest authority is broad enough to cover certain specific sensitivities that have been raised in this proceeding, as well as concerns of the Commission. Thus, we note that we may also examine, if appropriate, whether the seller obtained the license in good faith or for the primary purpose of selling it for a profit, whether the licensee makes serious efforts to develop a satellite or constellation, and/or whether the licensee faces changed circumstances.

222. Allowing those with no intention of building a satellite system to profit from the Commission's regulatory process would be contrary to the public interest. We do not expect this situation to arise very often, however.[528] In addition, the Commission always has the option to consider initiating a rulemaking proceeding to determine whether the available spectrum should be reallocated. Finally, we emphasize that a license purchaser will be required to comply with all the rules applicable to the original licensee, including but not limited to milestones, the performance bond, and the limits on pending applications and unbuilt satellites. We do not anticipate that such a review will slow down the processing of transfer requests.

223. In summary, we adopt the proposal in the *Notice* to eliminate the prohibition on sales of bare satellite licenses for profit. We find that the public interest benefits of retaining this restriction are significantly outweighed by the benefits of eliminating the restriction.

2. Revision of Anti-Trafficking Rule

224. *Background.* Intelsat proposes revising the anti-trafficking rule rather than eliminating it. Intelsat observes that the Commission's broadcast rules prohibit parties from accepting payments for withdrawing petitions to deny broadcast licenses unless the payments are less than the petitioner's legitimate and prudent out-of-pocket expenses, except in cases of *bona fide* merger transactions.[529] Intelsat proposes applying this standard to transfers of both licenses and pending applications, claiming that it is a "more relaxed approach" than our current anti-trafficking rule.[530] PanAmSat recommends retaining the current anti-trafficking policy, but applying it flexibly to allow ownership changes that are part of legitimate business transactions, or are entered into for financing purposes.[531]

225. *Discussion.* We do not adopt Intelsat's or PanAmSat's proposals. Above, we determined that eliminating the restriction on sales of satellite licenses will yield fairly substantial public interest benefits, with relatively few negative effects. In particular, we found that any

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528 While substantial evidence that a satellite license was obtained exclusively for purposes of selling for profit will weigh heavily against finding that a subsequent transfer of the license would further the public interest, bald allegations or weakly supported claims of speculation will not be afforded this weight in our public interest determination. We initiated this proceeding to expedite our satellite licensing process, in part to enable licensees to provide service to the public faster than is now possible. *Space Station Reform NPRM*, 17 FCC Rcd at 3852-53 (paras. 12-14). Eliminating the anti-trafficking rule helps further that policy goal. *Space Station Reform NPRM*, 17 FCC Rcd at 3885 (para. 115). It would undercut that goal to allow commenters to use our speculation concerns primarily for anti-competitive purposes to delay approval of other parties' transactions.

529 Intelsat Comments at 17-18, *citing* 47 C.F.R. §§ 73.3525, 73.3588.

530 Intelsat Comments at 18-19.

531 PanAmSat Comments at 18-19. *See also* Hughes Comments at 50-51 (retain rule but grant waivers in cases of "genuine cases of business transfers.")

increase in speculation resulting from the eliminating the restriction should not result in an increase in the price of satellite services. Therefore, we do not see any public interest benefit from restricting the sales of some licenses based on whether the sale is part of a "legitimate business transaction" or "*bona fide* merger transaction." Furthermore, as Teledesic points out, anti-trafficking rules in the past have generally not eliminated speculation and have hindered legitimate business transactions.[532]

E. Safeguards Against Frivolous or Speculative Applications

1. Safeguards in First-Come, First-Served Procedure

226. In the *Notice*, the Commission proposed several measures to discourage frivolous or speculative applications in the first-come, first-served procedure. First, the Commission proposed placing a limit on the number of satellite license applications any one entity can have on file.[533] In conjunction with this proposed limit, the Commission proposed an attribution rule to determine the applicant for purposes of this rule.[534] Further, the Commission proposed prohibiting applicants from transferring their place in any queue to another party.[535] For reasons discussed below, we adopt these proposals.

2. Safeguards in Modified Processing Rounds

227. The *Notice* did not propose any specific rule revisions to limit speculative applications in processing rounds. Teledesic, however, maintains that processing rounds create an incentive for speculation.[536] We agree. By announcing a cut-off date in a processing round, the Commission gives both speculative and legitimate applicants an opportunity to file, and to have their applications considered concurrently with the lead application. Furthermore, announcing a cut-off date can cause a sense of scarcity to develop, when applicants recognize that this may be their only opportunity to secure access to that orbit/spectrum resource. Consequently, we will adopt the same safeguards against speculation in modified processing rounds that we adopt for the first-come, first-served procedure.[537] We discuss these safeguards below.

3. Limit on Number of Pending Applications

228. *Background.* The *Notice* proposed limiting the number of satellite license applications any one applicant can have pending in a frequency band to five GSO orbital

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532 Teledesic Comments at 35-38; Teledesic Reply at 28-30.

533 *Space Station Reform NPRM*, 17 FCC Rcd at 3864-65 (para. 51).

534 *Space Station Reform NPRM*, 17 FCC Rcd at 3865 (para. 52).

535 *Space Station Reform NPRM*, 17 FCC Rcd at 3865-66 (para. 53).

536 Teledesic Comments at 5-8.

537 The Commission proposed these safeguards for both GSO and NGSO applications. *See Space Station Reform NPRM*, 17 FCC Rcd at 3864-66 (paras. 51-53).

locations and one NGSO system.[538] The *Notice* observed that the Commission placed a limit on the number of pending broadcast applications in the *TV and FM Broadcast Order*.[539] Furthermore, our rules currently limit the number of additional GSO orbital locations that may be assigned in each frequency band for satellite operators with previously authorized but unlaunched satellites in that band.[540] The Commission asked in the *Notice* whether the limit should include authorized but unlaunched satellites in addition to pending applications.[541]

229. *Discussion.* Teledesic argues that limiting pending satellite applications is a reasonable way to limit speculation without restricting applicants' business plans.[542] Teledesic also maintains that adopting this proposal would give licensees an incentive to turn in licenses for satellite systems that they do not intend to build.[543] Hughes, however, asserts that this proposal is too restrictive because it could preclude legitimate applications from consideration.[544] Alternatively, SES Americom asserts that limiting the number of pending satellite applications is not restrictive enough. SES Americom argues that such a limit would not prevent speculative applications because there could be an unlimited number of speculative applicants.[545]

230. We adopt our proposed limits on pending applications. We agree with Teledesic that limiting pending applications to five GSO orbit locations or one NGSO satellite system per frequency band will restrain speculation without restricting applicants' business plans. In addition, five orbit locations is reasonable because it gives licensees the option of providing a global service with good look angles for each satellite. We further agree that limiting pending applications gives licensees an incentive to turn in licenses for satellite systems that they do not intend to build. This in turn should make orbital locations available for reassignment more quickly than they would be if licensees waited until a milestone deadline. We disagree that this limit on pending applications will preclude legitimate applications from consideration. Rather, it simply requires satellite operators to prioritize their business plans. Although SES Americom is correct that this does not totally prevent speculation, it does provide, together with strict milestone enforcement and the new bond requirement we adopt above, some protection against speculation.

231. We also adopt our proposal to include authorized but unlaunched satellites in the five GSO-like orbit location limit.[546] Adopting our proposal to limit unlaunched satellites

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538 *Space Station Reform NPRM*, 17 FCC Rcd at 3864-65 (para. 51).

539 *Space Station Reform NPRM*, 17 FCC Rcd at 3864-65 (para. 51), *citing TV and FM Broadcast Order*, 50 Fed. Reg. at 19940 (para. 24).

540 *Space Station Reform NPRM*, 17 FCC Rcd at 3864-65 (para. 51), *citing* 47 C.F.R. § 25.140(f).

541 *Space Station Reform NPRM*, 17 FCC Rcd at 3864-65 (para. 51).

542 Teledesic Comments at 28-29.

543 Teledesic Comments at 44.

544 Hughes Comments at 28-29.

545 SES Americom Comments at 4.

546 *Space Station Reform NPRM*, 17 FCC Rcd at 3865 (para. 51).

provides additional protection against speculation, without substantially restricting licensees' flexibility. No one commented on this proposal. We will apply this limit on a frequency band-by-frequency band basis. This is consistent with the Commission's current practice of limiting additional orbital locations for satellite operators with previously authorized but unlaunched satellites on a frequency band basis.[547]

232. PanAmSat and Pegasus do not comment directly on the proposed limit on pending satellite applications. In the context of the Commission's proposal to include a system of preferences in its processing round rules, however, PanAmSat supports a two-orbit-location limit, with one additional orbit location allowed in subsequent processing rounds, as is permitted currently in the Commission's rules.[548] Pegasus advocates the current limit of two unbuilt satellites, but allowing applicants to exceed that limit upon a showing of a firm commitment to spend funds for constructing the additional satellites.[549] Pegasus is concerned that parties applying for licenses for more than two locations are likely going to "warehouse" the additional locations.[550] In this Order above, we reject proposals for systems of preferences intended to streamline processing rounds.[551] Here, we reject a two-unbuilt-satellite limit as a general proposition. Currently, the Commission's policy is to permit initial applicants in processing rounds to request two orbital locations per frequency band *per ocean region*, plus two over the continental United States (CONUS) region, for a total of eight per frequency band. Reducing the limit to five orbit locations provides additional protection against speculation, but still allows licensees to develop global satellite systems. If we were to reduce the limit to two, we would agree with Hughes that such a limit is likely to preclude legitimate applications from consideration. Moreover, considering requests for more than two pending GSO-like applications upon a case-by-case showing could result in licensing delay. Unlike the case-by-case showing proposed by Pegasus, we expect the five-pending-application rule to be an easily administered, bright-line rule. Reviewing those case-by-case showings might delay our review of other applications in the queue, which in turn would delay service to the public. Accordingly, we will not adopt Pegasus's proposal to impose a two-application limit on all GSO-like satellite applicants. Nevertheless, to address Pegasus's concern that allowing more than two pending satellite applications could lead to warehousing, we adopt in this Order above a limit of two pending applications and unbuilt satellites for licensees that have established a pattern of missing milestones.[552]

233. In summary, we will not accept any additional applications from entities which have more than five pending GSO-like satellite license applications or previously authorized but unlaunched GSO-like satellite systems, in any frequency band. Nor will we accept applications from entities with more than one pending application for an NGSO-like system, or more than one NGSO system where no satellites have been launched, in any frequency band. We emphasize

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547 *See Space Station Reform NPRM*, 17 FCC Rcd at 3865 n.59; 47 C.F.R. § 25.140(f).

548 PanAmSat Comments at 10-11.

549 Pegasus Comments at 5.

550 Pegasus Comments at 5.

551 Section V.C.2.

552 Section VII.C.10.

that these limits apply only to applications for U.S. licenses for new GSO-like and NGSO-like satellite systems. These limits do not apply to applications for replacement satellites, renewals of NGSO-like constellation licenses, modifications, transfers of control, or any other satellite-related application. Nor will we include a U.S. applicant's foreign-licensed satellites in these limits.[553] We find that these limits should discourage speculative satellite applications in most cases. In the event that our experience with these limits do not discourage a particular applicant from filing speculative applications, we will impose more stringent limits on the number of pending applications and unbuilt satellites on that applicant.[554]

4. Attributable Interest

234. *Background.* In the *Notice*, the Commission observed that limiting the number of orbit locations or constellations that an applicant can have pending requires it to determine who is an "applicant" for purposes of this limit.[555] Therefore, the Commission proposed attribution rules prohibiting a party from filing a satellite application if it holds more than 33 percent of the total asset value of applicants with applications for five GSO orbital locations, and one NGSO satellite system, in any frequency band, pending before the Commission.[556] We also noted that we adopted an attribution rule of 33 percent in the context of determining eligibility for the "new entrant" bidding credit in auctions for commercial broadcast service licenses.[557]

235. *Discussion.* Teledesic supports this proposal.[558] Hughes claims that the Commission's proposal is too restrictive for separate operating companies that have overlapping stock ownership, and to joint ventures.[559] Boeing claims that the proposed limit could be evaded by speculative applicants.[560]

236. We adopt our proposed attribution rule in a modified form. To limit speculative applications, we adopted a limit to the number of satellite applications an applicant can have pending before the Commission in this Order above.[561] This necessitates some attribution rule. Otherwise, applicants could evade the limit simply through corporate restructuring.

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553 We adopt limits for non-U.S.-licensed satellite operators seeking access to the U.S. market in Section VIII.F. below.

554 Section VII.C.10. above.

555 *Space Station Reform NPRM*, 17 FCC Rcd at 3865 (para. 52).

556 *Space Station Reform NPRM*, 17 FCC Rcd at 3865 (para. 52).

557 *Space Station Reform NPRM*, 17 FCC Rcd at 3865 (para. 52), *citing* 47 C.F.R. § 73.5008(c); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *Memorandum Opinion and Order*, MM Docket No. 97-234, 14 FCC Rcd 12541 (1999) (*Broadcast New Entrant Credit Order*).

558 Teledesic Comments at 29.

559 Hughes Comments at 29.

560 Boeing Comments at 7.

561 Section VII.E.3.

237. Consequently, the issue is not *whether* to adopt an attribution rule, but *what* attribution rule to adopt. Neither Hughes nor Boeing persuades us that our proposed attribution rule is unreasonable. Hughes claims that the proposed rule is too restrictive for satellite operators with overlapping stock ownership or involved in joint ventures. We use the 33 percent standard for the "new entrant" credit in auctions for commercial broadcast licenses. In that context, the Commission found that 33 percent was sufficient to avoid undercutting the policy goal of promoting competitive entry into the broadcast industry, without unreasonably limiting broadcasters' efforts to obtain financing.[562] The same concerns apply here. In contrast, Boeing contends that this standard is not restrictive enough, because it could be evaded by speculative applicants.[563] Therefore, to provide additional protection against speculation, we adopt two new provisions. First, we will revise our proposed attribution rule to include a controlling interest, and any other subsidiaries of that controlling interest.[564] Second, we will calculate ownership interests on a fully diluted basis. All agreements, such as warrants, stock options, and convertible debentures, will generally be treated as if the rights thereunder already have been fully exercised. This will provide additional protection against speculation by precluding parties from evading the limits by using stock options. The Commission has adopted a substantially similar measure to define "designated entities," which are small businesses and minority-owned businesses that have been eligible for bidding credits in certain license auctions.[565]

238. Accordingly, if one applicant has an interest in another applicant, in which the equity (including all stockholdings, whether voting or non-voting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of that applicant, the pending applications and unbuilt satellites of both applicants will be counted together for purposes of the limits.[566] Also, if an applicant, or the subsidiary of an applicant, has a controlling interest in another applicant, the pending applications and unbuilt satellites of both applicants will be counted together for purposes of the limits.[567] We will calculate ownership interests on a fully diluted basis, *i.e.*, all agreements, such as warrants, stock options, and convertible debentures, will generally be treated as if the rights thereunder already have been fully exercised.[568]

239. We explained above that the limits do not apply to applications other than new satellite applications. Similarly, this attribution rule does not preclude a participant in a

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562 *Broadcast New Entrant Credit Order*, 14 FCC Rcd at 12545-47 (paras. 9-11).

563 Boeing Comments at 7.

564 Specifically, we adopt here the "controlling interest" standard the Commission adopted in Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 15 FCC Rcd 15293, 15323-27 (paras. 59-67) (2000) (*Part 1 Fifth Report and Order*). *See also* 47 C.F.R. § 1.2110(b)(2).

565 47 C.F.R § 25.2110(c)(2)(ii)(A).

566 *Space Station Reform NPRM*, 17 FCC Rcd at 3865 (para. 52), *citing* 47 C.F.R. § 73.5008(c); *Broadcast New Entrant Credit Order*, 14 FCC Rcd 12541.

567 47 C.F.R § 1.2110(b)(2).

568 47 C.F.R § 1.2110(c)(2)(ii)(A).

processing round from purchasing the spectrum rights of another NGSO-like licensee in that processing round. A licensee with five pending GSO-like applications or unbuilt satellites in a frequency band, however, would not be allowed to acquire a license for another GSO-like satellite in that band. Similarly, in a merger transaction, the resulting entity would be required to abandon some of its pending applications if it exceeds the applicable limits.

5. Selling Place in Queue

240. *Background.* The Commission proposed prohibiting applicants from allowing other entities to assume their place in any queue.[569] The Commission explained that, without this prohibition, it is possible that some parties would file satellite applications simply to obtain a place in a queue to sell to another party willing and able to implement its proposed satellite system.[570]

241. *Discussion.* Hughes notes that the Commission also proposed to eliminate the anti-trafficking rule, and argues that it is inconsistent to prohibit sales of places in the queue while eliminating the anti-trafficking rule.[571] Teledesic argues that the arguments in favor of eliminating the anti-trafficking rule also support allowing the sale of places in the queue.[572] Teledesic also questions whether this safeguard is necessary if the first-come, first-served approach enables the Commission to act on applications as quickly as Teledesic expects.[573] SES Americom claims that allowing applicants to sell their place in line would facilitate speculation.[574]

242. We prohibit applicants from transferring their places in the queue. As the Commission explained in the *Notice*, without this prohibition, it is possible that some parties would file satellite applications simply to obtain a place in a queue to sell to another party willing and able to implement its proposed satellite system.[575] Accordingly, we must adopt this safeguard to avoid facilitating speculation.

243. Contrary to Hughes's contention, this decision is consistent with our decision above to eliminate the anti-trafficking rule. In the case of a license sale, the Commission has reviewed the licensee's application, and has determined that the licensee is qualified to hold a satellite license. In the case of a sale of a place in the queue, however, the Commission has not yet reviewed the application or reached any conclusion regarding the applicant's qualifications. There would be no way to determine whether the application is substantially complete, or filed merely to obtain a place in line to try to sell to other parties. By requiring applicants to demonstrate their qualifications before they are permitted to offer any spectrum rights or potential

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569 *Space Station Reform NPRM*, 17 FCC Rcd at 3865-66 (para. 53).

570 *Space Station Reform NPRM*, 17 FCC Rcd at 3865-66 (para. 53).

571 Hughes Comments at 29-31, 50.

572 Teledesic Comments at 29-31.

573 Teledesic Comments at 29.

574 SES Americom Reply at 17-18.

575 *Space Station Reform NPRM*, 17 FCC Rcd at 3865-66 (para. 53).

spectrum rights for sale, it is more likely that the applicant intends to construct the satellite system for which it has applied. Thus, we decrease the likelihood that the applicant has sought a license merely for speculation.

6. Hard Look Doctrine

244. In the *Notice*, the Commission emphasized that it requires satellite applications to be substantially complete when they are filed.[576] The Commission reasoned further that any relaxation of the requirement that satellite applicants submit substantially complete applications could encourage speculative applications.[577] The Commission also observed that it relied on a substantially complete application requirement to deter speculative applications in its broadcast first-come, first-served procedure.[578] None of the commenters responded to this discussion in the *Notice*. Here, we find that continuing to require substantially complete satellite applications will also continue to provide some additional protection against speculative satellite applications.

F. Mandatory Electronic Filing of Space Station Applications

245. *Background.* In the *Notice*, we requested comment on requiring most satellite applicants to file license applications electronically.[579] We observed that electronically filed earth station applications can be processed in about half the time as paper earth station applications.[580] In addition, we assumed that Internet access has become sufficiently common that few if any U.S.-licensed satellite operators will be disadvantaged by mandatory electronic filing.[581] In addition, the Commission observed that mandatory electronic filing would facilitate a first-come, first-served procedure, by enabling the Commission to record application filing times to the nearest thousandth of a second.[582]

246. *Discussion.* Intelsat supports mandatory electronic filing so that we can place applications in the queue based on the date and time of filing.[583] SIA advocates mandatory electronic filing, noting that it expedites Commission review of earth station applications,

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576 *Space Station Reform NPRM*, 17 FCC Rcd at 3875 (para. 84).

577 *Space Station Reform NPRM*, 17 FCC Rcd at 3878 (para. 93).

578 *Space Station Reform NPRM*, 17 FCC Rcd at 3878 n.123, *citing TV and FM Broadcast Order*, 50 Fed. Reg. at 19939-40 (paras. 19-24).

579 *Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 118). The Commission proposed mandatory electronic filing for all satellite applicants except DBS and DARS applicants. *Space Station Reform NPRM*, 17 FCC Rcd at 3850 n.4.

580 *Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 118), *citing Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25153 (para. 76).

581 *Space Station Reform NPRM*, 17 FCC Rcd at 3886 (para. 118).

582 *See Space Station Reform NPRM*, 17 FCC Rcd at 3862-63 (para. 45).

583 Intelsat Comments at 12.

including, on occasion, 100-page long applications.[584] Hughes argues, however, that the Commission should allow, but not mandate, electronic filing. Hughes maintains that space station applications are complex and cannot be handled routinely as many earth station applications can. Therefore, Hughes doubts whether mandatory electronic filing for space station applications would yield time savings comparable to electronic filing for earth station applications.[585] Hughes further contends that an electronic filing system might not handle hybrid satellite applications or "unusual" applications very well.[586]

247. We adopt our proposal to require space station applications to be filed electronically. The Commission requires mandatory electronic filing in other areas,[587] including requests for special temporary authority (STA) for wireless telecommunications services.[588] Furthermore, the International Bureau Filing System (IBFS) can record filing times to the nearest thousandth of a second. Thus, mandatory electronic filing will facilitate the first-come, first-served procedure for GSO-like satellite systems, without giving any particular applicant an advantage over any other applicant.[589] In fact, as the Commission explained in the *Notice*, a mandatory electronic filing requirement for satellite applications is potentially more fair to all potential applicants than a process that permits paper applications.[590] This is because paper applications must be submitted to the Commission in person or by mail, and these procedures clearly disadvantage applicants located outside of Washington, D.C. None of the commenters in this proceeding questioned this statement. Moreover, we specifically invited commenters to

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584 SIA Comments at 18.

585 Hughes Comments at 51-52.

586 Hughes Comments at 51-52.

587 *See* Wireline Competition Bureau Initiates Electronic Filing of Automated Reporting Management Information System (ARMIS) Data and Associated Documents By Incumbent Local Exchange Carriers, *Public Notice*, 18 FCC Rcd 3245 (Wireline Comp. Bur., 2003); Amendment of the Commission's Rules for Implementation of its Cable Operations And Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service, *Report and Order*, CS Docket No. 00-78, FCC No. 03-55 (released Mar. 19, 2003); Wireless Telecommunications Bureau (WTB) Extends Mandatory Electronic Filing Date for Microwave Licensees to Coincide with Availability of Electronic Filing Via the Internet, *Public Notice*, 15 FCC Rcd 15692 (Wireless Tel. Bur., 2000); 1998 Biennial Review – Streamlining of Mass Media Applications, Rules and Processes, *Report and Order*, MM Docket No. 98-43, 13 FCC Rcd 23056, 23060 (para. 8) (1998); Electronic Tariff Filing System (ETFS), *Order*, 13 FCC Rcd 12335 (Com. Car. Bur. 1998).

588 47 C.F.R. § 1.931(a).

589 The Internet is a packet-switching network, which splits up data into "packets." Each router in the network calculates the best routing for a packet at a particular moment, given current traffic patterns, rather than transmitting over a dedicated end-to-end transmission path. If congestion arises at a particular point in the network, an almost infinite array of alternative paths could be employed without the user knowing it. *Digital Tornado: The Internet and Telecommunications Policy*, OPP Working Paper No. 29 ((Mar. 1997) at 1-3; *Internet Over Cable: Defining the Future in Terms of the Past*, OPP Working Paper No. 30 (Aug. 1998) at 13-15. Thus, if applicants in Washington, DC and California submit a satellite application at the same time, it is possible that the California application will reach the Commission first.

590 *Space Station Reform NPRM*, 17 FCC Rcd at 3862-63 (para. 45).

discuss whether basing priority on thousandths of a second might disadvantage applicants based further away from Washington, D.C. because of the time needed to route applications through the Internet.[591] None of the parties address this issue.

248. We are sympathetic to Hughes's concerns about "unusual" satellite applications, but we are confident that our electronic filing system can accept unusual satellite applications without any problem. We have accepted electronically filed space station applications for several years now. That experience has enabled us to refine our electronic filing system as needed. As SIA observes, our electronic filing system can accept 100-page long earth station applications.[592] Furthermore, 70 percent of the satellite applications filed in 2002 were electronic. Therefore, we conclude that our electronic filing system will be sufficient to support our satellite application mandatory electronic filing requirement. In the unlikely event that an applicant brings to our attention any problems with filing an unusual application, we will work to resolve those problems.

249. Although we agree with Hughes that we do not have "routine" processing standards for space station applications, we find that mandatory electronic filing is still warranted to facilitate our first-come, first-served procedure for GSO-like satellite applications.[593] The first-come, first-served procedure will enable us to act on GSO-like satellite applications much faster than is now possible,[594] and this procedure will be expedited further if we minimize the number of satellite applications that must be considered simultaneously.[595] Thus, mandatory electronic filing will expedite our actions on satellite applications, regardless of whether we can process any satellite applications "routinely."

G. Replacement Satellites

1. Streamlined Procedure

250. *Background.* In the *Notice*, we explained our replacement satellite policy for GSO satellites.[596] Given the huge costs of building and operating GSO space stations, we have found

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591 *Space Station Reform NPRM*, 17 FCC Rcd at 3862-63 (para. 45).

592 SIA Comments at 18.

593 *See Space Station Reform NPRM*, 17 FCC Rcd at 3862-63 (para. 45). *See also* Intelsat Comments at 12.

594 Section VI.B.

595 *See* Teledesic Comments at 22-24.

596 *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 119). We have a different policy for replacements of satellites in NGSO constellations. Generally, NGSO authorizations cover all construction and launches necessary to implement the complete constellation and to maintain it until the end of the license term, including any replacement satellites necessitated by launch or operational failure, or by retirement of satellites prior to the end of the license period. All replacement satellites must be technically identical to those in service, including the same frequency bands and orbital parameters, and may not cause a net increase in the number of operating satellites in the authorized orbital planes or an additional orbital plane. *See* Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, *Report and Order*, CC Docket No. 92-166, 9 FCC Rcd 5936, 6006 (para. 182) (1994) (*Big LEO Order*); The Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ku-band, *Report and*

that there should be some assurance that operators will be able to continue to serve their customers.[597] Therefore, the Commission has stated that, when an orbit location remains available for a U.S. satellite with the technical characteristics of the proposed replacement satellite, it will generally authorize the replacement satellite at the same location.[598] It has also acted on applications for replacement satellites as they are filed, without consolidating them into a processing group.[599]

251. The Commission usually acts on replacement satellite applications in Orders, however. We requested comment on two alternatives for streamlining this process. First, we proposed grant-stamping unopposed replacement satellite applications with technical characteristics consistent with those of the satellite to be retired.[600] We stated that this process would be similar to that we use for unopposed earth station applications. We would simply stamp the application as "granted" and return a copy to the applicant.[601]

252. As an alternative, we proposed deeming unopposed replacement satellite applications granted after a specific amount of time after the date for petitions to deny has passed, unless we issue a public notice stating that we need more time to review the application.[602] Under this proposal, once we have decided to allow the application to be deemed granted, we would issue a public notice announcing that fact.[603] The Commission noted that it used a similar procedure for certain international Section 214 applications, and for certain submarine cable landing license applications.[604] We also invited comment on the timing of such grants and suggested a "deemed granted" date of at least 60 days after the date for filing petitions to deny.[605]

Order and Further Notice of Proposed Rulemaking, IB Docket No. 01-96, 17 FCC Rcd 7841, 7861-62 (para. 68) (2002).

[597] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 119), *citing* Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order*, 3 FCC Rcd 6972, 6976 n.31 (1988) (*1988 Orbit Assignment Order*); Hughes Communications Galaxy, Inc., *Order and Authorization*, 6 FCC Rcd 72, 74 n.7 (1991) (*Hughes Replacement Order*); GE American Communications, Inc., *Order and Authorization*, 10 FCC Rcd 13775, 13775-76 (para. 6) (Int'l Bur. 1995) (*GE Americom Replacement Order*).

[598] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 119), *citing 1988 Orbit Assignment Order*, 3 FCC Rcd at 6976 n.31; *GE Americom Replacement Order*, 10 FCC Rcd at 13775-76 (para. 6).

[599] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 119), *citing GE Americom Replacement Order*, 10 FCC Rcd at 13775-76 (para. 6); Loral Spacecom Corp., *Order and Authorization*, 13 FCC Rcd 16348, 16440 (para. 5) (Int'l Bur., Sat. and Rad. Div., 1995).

[600] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 120).

[601] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 120).

[602] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 120).

[603] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 120).

[604] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 n.159.

[605] *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 120).

253. *Discussion.* Hughes and Teledesic support grant-stamping unopposed replacement satellite applications.[606] SIA and Intelsat support the "deem granted" proposal.[607] PanAmSat supports both alternatives, but it prefers the deemed granted procedure because the public notice would make it easier for the public to keep track of the Commission's satellite licensing actions.[608] We adopt the "grant-stamp" proposal. We have used the grant-stamp procedure for unopposed earth station applications, and find that this experience is more comparable to space station applications than the international Section 214 applications and cable landing license applications subject to a "deemed granted" procedure. Nevertheless, we are sensitive to PanAmSat's concerns about keeping track of the Commission's satellite licensing actions. Accordingly, we will issue public notices announcing when we have grant-stamped unopposed replacement satellite applications.

254. Intelsat asserts that a petition to deny a replacement satellite application should not render the application ineligible for a "deemed granted" procedure.[609] SES Americom contends that the Communications Act requires that any "deemed granted" procedure should be limited to uncontested applications.[610] We have traditionally addressed petitions to deny satellite applications in the context of an Order, so that we could provide a reasoned explanation for denying or granting the petition to deny. Intelsat has not persuaded us to depart from this policy.

2. Technical Characteristics of Replacement Satellites

255. *Background.* In the *Notice*, the Commission proposed making the streamlined procedure for replacement satellites available for applications for replacement satellites with technical characteristics consistent with those of the satellite to be retired.[611]

256. *Pleadings.* Several commenters ask the Commission to explain in more detail the extent to which replacement satellites must be technically consistent with the satellites they are intended to replace for purposes of the replacement satellite policy.[612] For example, these commenters argue that satellite operators should be allowed to increase power from one generation of satellites to the next without losing their replacement expectancy.[613] They further

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606 Hughes Comments at 51; Teledesic Comments at 44.

607 SIA Comments at 39-41; Intelsat Comments at 21-23.

608 PanAmSat Comments at 13-14.

609 Intelsat Comments at 22.

610 SES Americom Reply at 18, *citing* 47 U.S.C. § 309(d)(2).

611 *Space Station Reform NPRM*, 17 FCC Rcd at 3887 (para. 120).

612 SIA Comments at 40-41; Intelsat Comments at 22-23; PanAmSat Comments at 14-15; PanAmSat Reply at 4; SES Americom Reply at 23. *See also* Hughes Comments at 51.

613 SIA Comments at 40-41; Intelsat Comments at 22-23; PanAmSat Comments at 14-15; PanAmSat Reply at 4; SES Americom Reply at 23.

contend that satellite operators should be allowed to expand their coverage areas.[614] Finally, these parties request that the Commission allow replacement satellite applications to include "expansion frequency" requests, such as a request for authority to operate in extended Ku-band frequencies when the existing satellite license includes conventional Ku-band authority.[615]

257. *Discussion.* When we stated in the *Notice* that we would use a streamlined licensing process for replacement satellites that are technically consistent with the satellites they are replacing, we did not intend to require the satellites to be technically identical. We do not require replacement satellites to be technically *identical* to the existing satellite.[616] We recognize that next-generation satellites will incorporate satellites with technical advancements made since the previous generation satellite was launched. We do not intend to change this policy, which facilitates state-of-the-art systems. Rather, we will continue to assess only whether operations of the replacement satellite will be consistent with our international coordination obligations pursuant to regulations promulgated by the International Telecommunication Union.[617] Thus, we will continue to consider applications for replacement satellites with higher power capabilities relative to the applicant's existing satellites.[618]

258. In the past, we have considered applications for replacement satellites with greater coverage areas than the original satellites.[619] We have also considered requests for replacement conventional C-band or Ku-band satellites seeking authority to operate in the extended C-band or extended Ku-band, respectively.[620] We find, however, that we must revisit these aspects of our replacement satellite policy in light of our new first-come, first-served procedure. Under our new procedure, parties are free to apply for licenses to operate only in the extended C-band or

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[614] SIA Comments at 40-41; Intelsat Comments at 22-23; PanAmSat Comments at 14-15; PanAmSat Reply at 4; SES Americom Reply at 23.

[615] SIA Comments at 40-41; Intelsat Comments at 22-23; PanAmSat Comments at 14-15; PanAmSat Reply at 4; SES Americom Reply at 23. SIA recommends limiting this "expansion frequency" policy to frequencies that are not shared between GSO and NGSO satellite operators, such as the Ka-band. SIA Comments at 41 n.95.

[616] *See Space Station Reform NPRM*, 17 FCC Rcd at 3888 n.160, and sources cited therein.

[617] *See* Hughes Communications Galaxy, Inc., *Order and Authorization*, 6 FCC Rcd 72, 74 n.7 (1991) (*Hughes Replacement Order*); *cited in Space Station Reform NPRM*, 17 FCC Rcd at 3887 n.158.

[618] *See* American Telephone and Telegraph Company, *Order and Authorization*, 10 FCC Rcd 12132, 13133 (para. 7) (Int'l Bur. 1995) (authorizing replacement satellite capable of operating in a "'non-routine' high power mode," but cautioning licensee that it is responsible for coordinating the higher power with adjacent satellite operators). *See also* Hughes Communications Galaxy, Inc., *Memorandum Opinion and Order*, 5 FCC Rcd 1653 (Com. Car. Bur. 1990) (granting modification of replacement satellite license to increase transponder amplifier power).

[619] *See* Application of Columbia Communications Corporation for Modification of Authorization to Permit Operation of Ku-band Satellite Capacity on the Columbia 515 Satellite Located at 37.7° West Longitude, *Memorandum Opinion and Order*, 16 FCC Rcd 12480, 12483-84 (para. 9) (Int'l Bur. 2001).

[620] PanAmSat Licensee Corporation, Application for Authority to Launch and Operate a Hybrid Replacement Fixed Satellite Service Space Station, *Order and Authorization*, 15 FCC Rcd 22156, 22157-58 (para. 5) (Int'l Bur., Sat. and Rad. Div., 2000).

extended Ku-band at a particular orbit location if no one has previously been authorized to provide that service. It would be contrary to the public interest to preclude a party from providing such a service merely because a current licensee might request that authority in a future replacement satellite application. We will consider replacement satellite applications that request greater coverage areas and/or extended band authority, but only if no other applicants have been licensed to provide those services. In other words, satellite operators may request such operating authority, but this authority is not included in their replacement expectancies.

H. Full Frequency Reuse

259. *Background.* In the *Notice*, we stated that our two-degree-spacing policy[621] for GSO satellite systems includes full frequency reuse requirements.[622] Currently, the full frequency reuse requirements require FSS satellite operators to use both vertical and horizontal polarization.[623] Essentially, full frequency reuse doubles the capacity of a space station. Thus, our full frequency reuse requirements are important for ensuring that scarce orbit and spectrum resources are used efficiently.[624]

260. Our full frequency reuse policy for GSO satellites operating in the conventional C-band and Ku-band[625] is codified in Sections 25.210(e), (f), and (g) of our rules.[626] We proposed clarifications to these rules in the *Notice*. First, we proposed clarifying that these requirements apply to the conventional C-band and Ku-band.[627] Second, we proposed revising Section 25.210(f) based on the language we used for Ka-band full frequency reuse requirements in

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[621] Part 25 includes several "2° spacing" requirements for geostationary satellite orbit satellites. The Commission instituted its 2° orbital spacing policy in 1983 to maximize the number of satellites in orbit. Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, *Report and Order*, CC Docket No. 81-704, FCC 83-184, 54 Rad. Reg. 2d 577 (released Aug. 16, 1983); *reprinted at* Licensing Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40233 (Sept. 6, 1983) (*Two Degree Spacing Order*). Under the 2° spacing framework, the Commission assigns adjacent in-orbit co-frequency satellites to orbit locations 2° apart in longitude. *Space Station Reform NPRM*, 17 FCC Rcd at 3879 (para. 95), *citing Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25132 (para. 7).

[622] *Space Station Reform NPRM*, 17 FCC Rcd at 3879 (para. 96).

[623] "For fixed-satellite space stations providing domestic service, full frequency re-use is defined as re-use of the frequency bands by polarization discrimination in both the uplink and downlink directions using state-of-the-art equipment and techniques." 47 C.F.R. § 25.210(f).

[624] *Space Station Reform NPRM*, 17 FCC Rcd at 3879 (para. 96), *citing* Systematics General Corporation, *Memorandum Opinion and Order*, 103 FCC 2d 879, 881-82 (paras. 6-9) (1985); Columbia Communications Corporation, *Memorandum Opinion, Order, and Authorization*, 7 FCC Rcd 122, 123 (para. 15) (1991); *First Columbia Milestone Order*, 15 FCC Rcd at 15572 (para. 13).

[625] The conventional Ku-band is the 11.7-12.2 GHz and 14.0-14.5 GHz bands.

[626] 47 C.F.R. §§ 25.210(e), (f), (g). Section 25.210(e) creates the full frequency reuse requirement for GSO FSS space stations. Section 25.210(f) defines full frequency reuse for domestic satellite service, and Section 25.210(g) defines full frequency reuse for international satellite service.

[627] *Space Station Reform NPRM*, 17 FCC Rcd at 3879-80 (para. 97).

Section 25.210(d).[628] Specifically, we proposed revising Section 25.210(f) to read as follows: "All space stations in the Fixed Satellite Service in the 3700-4200 MHz, 5925-6425 MHz, 11.7-12.2 GHz, and 14.0-14.5 GHz bands shall employ state-of-the-art full frequency reuse either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams."[629] We asked whether this proposal effectively takes account of the current state of the art in satellite technology and expected future developments.[630] We also asked whether we should apply these full frequency reuse requirements to extended C-band and extended Ku-band satellites.[631]

261. *Discussion.* Teledesic supports the Commission's proposal to clarify its full frequency reuse policies.[632] Teledesic agrees that the Commission should revise Section 25.210(f) based on the language it used for Ka-band full frequency reuse requirements in Section 25.210(d).[633] No one opposed this proposal.

262. We hereby adopt all the revisions to the full frequency reuse rules that were proposed in the *Notice*. When we adopted full frequency reuse requirements for Ka-band GSO satellite systems, we noted that new satellites are capable of generating multiple narrow-beam spot beams.[634] We also noted that such space stations reuse frequencies in spatially independent beams rather than by using orthogonally polarized signals within a single beam.[635] By revising Section 25.210(f), we encourage deployment of new, technologically innovative spot-beam satellites in the C-band and Ku-band.[636]

263. We also conclude that GSO satellite operations in the extended C- and Ku-bands should be subject to full frequency reuse requirements as well. There is no policy justification for

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628 *Space Station Reform NPRM*, 17 FCC Rcd at 3879-80 (para. 97), *citing* 47 C.F.R. §25.210(d). The term "Ka-band" generally refers to the space-to-earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding earth-to-space (uplink) frequencies at 27.5-30.0 GHz.

629 *Space Station Reform NPRM*, 17 FCC Rcd at 3879-80 (para. 97).

630 *Space Station Reform NPRM*, 17 FCC Rcd at 3879-80 (para. 97).

631 *Space Station Reform NPRM*, 17 FCC Rcd at 3879-80 (para. 97).

632 Teledesic Comments at 40-41.

633 Teledesic Comments at 40-41.

634 *Ka-Band Service Rules Order*, 12 FCC Rcd at 22321-22 (para. 28).

635 *Ka-Band Service Rules Order*, 12 FCC Rcd at 22321-22 (para. 28).

636 When the Commission first adopted full frequency reuse requirements, the requirement was defined in terms of minimum use of bandwidth allocated to the service. For example, a space station operating in the conventional C-band was required to have a capacity equivalent to that provided by a space station having transponders that use 864 MHz of a 1000 MHz (with two-times frequency reuse) assignment and provide a total power of 192 watts. *See Space Station Reform NPRM*, 17 FCC Rcd at 3879 (para. 96), *citing Two-Degree Spacing Order*, 54 RR 2d at 598 n.67; *Separate Systems Order*, 101 FCC 2d at 1168-69 (para. 248). Here, we emphasize that we now define full frequency reuse in terms of use of dual polarization, not minimum bandwidth usage.

allowing satellite operators to operate inefficiently, without full frequency reuse, in extended bands. Therefore, we will revise Section 25.210(f) to include the extended C- and Ku-bands.

264. SES Americom recommends revising Section 25.210(e) to be consistent with Section 25.210(d), and our proposed revisions Section 25.210(f).[637] Section 25.210(f) establishes full frequency reuse requirements for all conventional and extended C-band and Ku-band satellite services. Therefore, rather than revise Section 25.210(e) as SES Americom recommends, we remove it from Part 25. Similarly, we remove Section 25.210(g) as unnecessary in light of our revisions to Section 25.210(f).

I. Miscellaneous

1. Space Station License Terms

265. *Background.* Together with the *Notice*, the Commission adopted a *First Report and Order* in another proceeding, in which it adopted rules to enable it to issue space station and earth station licenses with 15-year terms, an increase from the 10-year terms in the previous rules.[638] The Commission stated that the new earth station license term rule applies only to earth station licenses granted after the new rules take effect.[639] The Commission did not state clearly whether existing space station licenses were subject to the revised rule.[640]

266. *Discussion.* SIA argues that the terms of existing satellite licenses should be extended to 15 years, to be consistent with the license terms of satellites granted under the revised rules.[641] We find that the license terms of existing space station licenses should be extended to 15 years. We did not adopt this proposal for earth station licenses because it would be potentially burdensome for licensees and the Commission to reissue thousands of earth station licenses.[642] This reason does not apply to space station licenses, which number in the dozens. Accordingly, we adopt SIA's proposal. All space station licenses are deemed automatically modified by extending the license term of the satellite, or satellite constellation in the case of NGSO systems, an additional five years, to 15 years, from the date the first satellite is successfully placed into orbit.

267. We also revise Section 25.121(e). Currently, Section 25.121(e) requires NGSO satellite licensees requesting replacement authority for next-generation satellites to file their applications about eight years after the beginning of the license term of the current-generation system.[643] As a logical outgrowth of our decision to extend the license term for all satellite

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637 SES Americom Comments at 9-10.

638 *Space Station Reform NPRM*, 17 FCC Rcd at 3894-96 (paras. 139-43).

639 *Space Station Reform NPRM*, 17 FCC Rcd at 3895 (para. 142).

640 *Space Station Reform NPRM*, 17 FCC Rcd at 3895-96 (para. 143).

641 SIA Comments at 22.

642 *Space Station Reform NPRM*, 17 FCC Rcd at 3895 (para. 142).

643 "Applications for space station system replacement authorization for non-geostationary orbit satellites shall be filed no earlier than 90 days, and no later than 30 days, prior to the end of the seventh year of the existing license term." 47 C.F.R. § 25.121(e).

licensees, we also extend the deadline for all NGSO licensees to file their replacement satellite applications until about two years before the end of their 15-year license terms, as extended in this Order.

2. Spectrum Reallocations

268. *Background.* In the *Notice*, the Commission proposed a procedure to expedite reassignment of licenses to other satellite operators if the licensee loses its license for any reason.[644] CTIA recommends extending that concept. For example, if an initial group of satellite licensees does not make sufficient progress in constructing their systems, CTIA recommends that the Commission stop considering additional applications pending reallocation of the spectrum to another service.[645] CTIA suggests that the Commission consider reallocating satellite spectrum to another service whenever no "credible" satellite license application is filed within a year of the time the spectrum is allocated to satellite service.[646] CTIA also recommends considering reallocating satellite spectrum to another service whenever a satellite license is revoked.[647]

269. SES Americom argues that CTIA's proposals are inconsistent with sound spectrum policy.[648] Several commenters point out that the Table of Frequency Allocations is based on long-term spectrum planning and should not be altered because some operators have tried and failed to provide service.[649] ICO argues that CTIA's proposals would have eliminated DBS, cellular, UHF, and FM services if they were applied to those services.[650] PanAmSat also contends that this proposal is beyond the scope of this proceeding.[651]

270. *Discussion.* We will not adopt CTIA's proposals. Adopting CTIA's proposals would be equivalent to assuming that spectrum should be reallocated whenever a single satellite operator or group of operators fails to meet a milestone, or whenever satellite license applicants do not meet CTIA's proposed credibility standard. Under our current procedure, when we decide to allocate spectrum to a particular use, we base our decision on specific principles and policy goals.[652] These goals are not thwarted because particular satellite licensees are unable to move

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644 *See Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 34).

645 CTIA Comments at 6-7.

646 CTIA Comments at 8.

647 CTIA Comments at 8.

648 SES Americom Reply at 19-21.

649 SES Americom Reply at 20; PanAmSat Reply at 5; ICO Reply at 5-6.

650 ICO Reply at 6-8.

651 PanAmSat Reply at 4-5.

652 Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, *First Order on Reconsideration*, IB Docket No. 98-172, 16 FCC Rcd 19808, 19811 (para. 6) (2001) ("Based on the extensive record in the proceeding, on June 8, 2000, the Commission adopted the *18 GHz Order* that made several important decisions with the goal of permitting more efficient use of the radio spectrum for existing and future operators and facilitating deployment of new services in the band.")

forward. Furthermore, CTIA's proposed automatic mechanism to initiate a spectrum reallocation proceeding when a satellite licensee fails to go forward limits our flexibility to determine how the public interest will be best served. In cases where reallocating spectrum from one service to another would further the public interest, we can reallocate that spectrum in a rulemaking proceeding.[653] In addition, if we adopted an automatic mechanism for reallocating spectrum when satellite operators fail to meet a milestone, without another mechanism for reallocating spectrum in cases where other operators in other services fail to meet milestones, we would be declaring by government fiat that other services provide a higher and better use of spectrum than satellite service under all circumstances.

3. Special Temporary Authority

271. *Background.* SIA requests that we specify in the rules the extent to which we will grant applicants special temporary authority (STA) without placing the STA request on public notice.[654] SIA further recommends treating STA requests as granted as of seven business days after they are filed for STA requests less than 30 days, or five business days after the end of the public notice period for STA requests greater than 30 days.[655]

272. *Discussion.* We adopt SIA's proposal to revise the Commission's rules to spell out more completely the requirements for STAs. These requirements are now set forth in Section 309 of the Communications Act. Section 309(c)(2)(G) governs STA requests that are not placed on public notice.[656] Under that provision, the Commission may grant STAs for no more than 30 days in cases where an application for regular authority is not contemplated, or for 60 days otherwise. Under Section 309(f), the Commission may grant STA requests for up to 180 days if they are placed on public notice.[657] In this Order, we revise Section 25.120 of our rules to include these provisions.[658]

273. We will not adopt rules that automatically grant an STA request if we do not act on the request within a certain number of days, however. In other cases where we have allowed filings by regulated companies to take effect after a certain number of days, the procedure was established by the Communications Act,[659] or we adopted safeguards sufficient to ensure that allowing the filing to take effect would not be inconsistent with the public interest.[660] SIA's proposal does not

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653 *See* Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, GN Docket No. 01-74, 17 FCC Rcd 1022 (2002).

654 SIA Comments at 21-22.

655 SIA Comments at 21-22.

656 47 U.S.C. § 309(c)(2)(G).

657 47 U.S.C. § 309(f).

658 47 C.F.R. § 25.120.

659 47 U.S.C. § 204(a)(3) (common carrier tariff filings are "deemed lawful" unless Commission takes action within specified time).

660 *See* 1998 Biennial Regulatory Review -- Review of International Common Carrier Regulations, *Report and Order*, IB Docket No. 98-118, 14 FCC Rcd 4909, 4913-14 (para. 12) (1999) (the

include any such safeguards. In addition, the Communications Act specifies that we grant STAs only when there are "extraordinary circumstances."[661] There is nothing in the Communications Act that suggests that Congress contemplated allowing STA requests to be routinely granted. Moreover, in emergency cases, the Commission can grant STAs orally, to be memorialized later by letter.[662]

4. Petitions for Reconsideration

274. Teledesic proposes a stamp-based procedure for denying meritless petitions for reconsideration.[663] Teledesic does not propose a definition for "meritless." We see no need to adopt this procedure at this time, especially with no dividing line between "meritless" petitions and other petitions. In addition, this proposal seems unnecessary. If a petition for reconsideration truly has no merit, it can be dismissed in a timely manner under the Commission's current procedure.[664] This is particularly true for petitions for reconsideration that do not raise any new arguments. [665]

5. Pending Satellite Applications

275. There are several satellite license applications currently pending before the Commission, including applications for NGSO and GSO satellites that would operate in the V-band,[666] and for NGSO satellites that would operate in the Ka-band.[667] For reasons set forth in this

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class of international Section 214 applications that qualify for streamlined treatment are subject to regulations and safeguards sufficient to prevent anticompetitive effects in the U.S. market).

661 47 U.S.C. § 309. Convenience to the applicant, such as marketing considerations or meeting scheduled customer in-service dates, will not be deemed sufficient for this purpose. 47 C.F.R. § 25.120(b).

662 *See* Letter from Jennifer M. Gilsenan, Chief, Policy Branch, Satellite Division, International Bureau, to Nancy J. Eskanazi, Vice President and Associate General Counsel, SES Americom, Inc. (dated June 25, 2002) (memorializing oral STA grant to relocate satellite from 79° W.L. to 37.5° W.L.).

663 Teledesic Comments at 44-46.

664 *See* Texcom, Inc., d/b/a Answer Indiana, Complainant, v. Bell Atlantic Corp., d/b/a Verizon Communications, Defendant, *Order on Reconsideration*, 17 FCC Rcd 6275 (2002); Joy Public Broadcasting Corporation, Radio Station WJTF-FM, Panama City, Florida, *Memorandum Opinion and Order*, 16 FCC Rcd 11971 (Enf. Bur. 2001); Applications of Warren Price Communications, Inc., *Memorandum Opinion and Order*, MM Docket No. 87-246, 7 FCC Rcd 6850 (1992) (examples of dismissals of petitions for reconsideration because they had no merit).

665 *See* 47 C.F.R. § 1.106(b)(3).

666 The Commission adopted the current band plan for non-government operations in the V-band in December 1998. Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations, *Report and Order*, IB Docket No. 97-95, 13 FCC Rcd 24649 (1998) (*36-51 GHz Order*), *aff'd* 15 FCC Rcd 1766 (1999) (*36-51 GHz Reconsideration Order*). The Commission is currently considering revising these allocations. *See* Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation

section below, we will apply the rules and procedures we adopt in this Order to pending applications, in cases where doing so will help further the goals of this proceeding to expedite service to the public and discourage speculation.

276. The Commission is allowed to apply new procedures to pending applications under limited circumstances. Specifically, the Commission can apply new procedures to pending applications if doing so does not impair the rights an applicant possessed when it filed its application, increase an applicant's liability for past conduct, or impose new duties on applicants with respect to transactions already completed.[668] Applying our new procedures to pending satellite applications as discussed below would not have any of these results.

277. Applying new procedures to pending satellite applications would not impair the rights that any applicant possessed when it filed its application, nor impose any new duty with respect to a transaction already completed. Courts have explained that applicants do not gain any vested right merely by filing an application.[669] Similarly, merely filing an application cannot be considered a "transaction already completed" for purposes of this analysis. In addition, the pending applications were filed under the current processing round procedures described in this Order above.[670] The current processing round procedure included the fungibility policy eliminated in the Order above.[671] Thus, at the time applicants filed their applications, they had no reasonable basis for assuming that they would receive the operating authority they requested, or that they

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of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations, *Further Notice of Proposed Rulemaking*, IB Docket No. 97-95, 16 FCC Rcd 12244 (2001) (*36-51 GHz Further Notice*).

667 For more on Ka-band NGSO service, see The Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed-Satellite Service in the Ka-Band, *Notice of Proposed Rulemaking*, IB Docket No. 02-19, 17 FCC Rcd 2807 (2002) (*Ka-band NGSO NPRM*).

668 DirecTV, Inc., v. FCC, 110 F.3d 816, 825-26 (D.C. Cir., 1997) (*DirecTV*); Landgraf v. USI Film Products, 511 U.S. 244, 280 (1994) (*Landgraf*).

669 Chadmoore Communications, Inc. v. FCC, 113 F.3d 235, 240-41 (D.C. Cir. 1997) (*Chadmoore*) ("In this case the Commission's action did not increase [the applicant's] liability for past conduct or impose new duties with respect to completed transactions. Nor could it have impaired a right possessed by [the applicant] because none vested on the filing of its application."); Hispanic Info. & Telecomms. Network v. FCC, 865 F.2d 1289, 1294-95 (D.C.Cir.1989) ("The filing of an application creates no vested right to a hearing; if the substantive standards change so that the applicant is no longer qualified, the application may be dismissed."); Schraier v. Hickel, 419 F.2d 663, 667 (D.C.Cir.1969) (filing of application that has not been accepted does not create a legal interest that restricts discretion vested in agency). *See also* United States v. Storer Broadcasting Co., 351 U.S. 192 (1952) (pending application for new station dismissed due to rule change limiting the number of licenses that could be held by one owner); Bachow Communications, Inc. v. FCC, 237 F.3d 683, 686-88 (D.C. Cir. 2001) (*Bachow*) (upholding freeze on new applications and dismissal of pending applications in light of adoption of new licensing scheme); PLMRS Narrowband Corp. v. FCC, 182 F. 3d 995, 1000-01 (D.C. Cir. 1999) (applicant did not, by virtue of filing application, obtain the right to have it considered under the rules then applicable).

670 Section III.A. above. *See also Space Station Reform NPRM*, 17 FCC Rcd at 3850-52 (paras. 5-10).

671 Section V.E., above.

would be granted any operating authority at all if other mutually exclusive applications were filed. In other words, no applicant had any right to rely on our former procedures for a grant, and applying new procedures does not impose any burden on any applicant.[672] Accordingly, applying our new procedures to pending satellite applications does not impair the rights any applicant had at the time it filed its application.

278. We recognize that the authorizations issued under our new procedures may not be exactly what applicants expected. This by itself does not make our decision to rely on the new procedures unreasonable, however. Courts have determined that any statute may unsettle expectations and impose burdens on past conduct. For example, a new property tax or zoning regulation may upset the reasonable expectations that prompted those affected to acquire property.[673] Just as such new property taxes or zoning regulations are not inherently unreasonable, we conclude that reviewing satellite applications under procedures adopted after the applications were filed is not inherently unreasonable.

279. The Commission's primary goals in this proceeding include adopting licensing procedures that will allow faster service to the public, while maintaining adequate safeguards against speculation.[674] Continuing to consider pending applications under the existing processing round procedure would frustrate these goals in the case of the V-band.[675] Accordingly, we direct the International Bureau to treat all pending V-band applications filed in a timely manner in the current processing round as though they were filed at the same time. The V-band will be divided between GSO-like service and NGSO-like service based on the proportion of qualified GSO-like applicants and NGSO-like applicants. Qualified GSO-like applicants will be licensed to the orbit locations they requested. In cases in which two GSO-like applicants requested mutually exclusive orbit locations, the applicants will be given an opportunity to amend their applications to request another location. In cases where the applicants choose not to amend their applications, the Bureau will divide the GSO-like portion of the V-band at that location equally between the two applicants. Also, the Bureau will divide the NGSO-like portion of the V-band equally among the qualified NGSO-like applicants. The Commission is in the process of considering revisions to the V-band band plan.[676] We direct the International Bureau to release a public notice shortly after the pending V-band Report and Order is released, to explain this V-band procedure in more detail, and to give V-band applicants an opportunity to amend their applications if necessary.

280. In the Notice of Proposed Rulemaking in the Ka-band licensing proceeding, we proposed a method that would enable multiple Ka-band NGSO systems to share the same spectrum.[677] The pleading cycle in that proceeding has closed and we have developed a full

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672 *See* Cassell v. FCC, 154 F.3d 478, 486-87 (D.C. Cir., 1998).

673 *Langraf*, 511 U.S. at 269-70; *DirecTV*, 110 F.3d at 826, *citing* Bell Atlantic Telephone Cos. v. FCC, 79 F.3d 1195, 1207 (D.C. Cir., 1996); Black Citizens for a Fair Media v. FCC, 719 F.2d 407, 411 (D.C. Cir., 1983).

674 *Space Station Reform NPRM*, 17 FCC Rcd at 3852-56 (paras. 11-23); 3864-66 (paras. 51-53).

675 *Chadmoore*, 113 F.3d at 242; *Bachow*, 237 F.3d at 686.

676 *36-51 GHz Further Notice*, 16 FCC Rcd 12244.

677 *Ka-band NGSO NPRM*, 17 FCC Rcd at 2807 (para. 2).

record on our licensing proposal. At this stage in the proceeding, we see no reason to impose a band-splitting approach on the Ka-band NGSO applicants if they believe that they can share the spectrum. Considering the comments will allow us to determine which licensing method is best suited for the Ka-band NGSO applications, without delaying grant of the licenses. Therefore, we direct the International Bureau to award Ka-band licenses pursuant to the processing mechanism adopted in the forthcoming Report and Order in the Ka-band NGSO licensing proceeding.

281. In the case of both V-band and Ka-band NGSO applications, however, we find that eliminating the anti-trafficking rule is likely to expedite provision of service to the public, and that application of the safeguards against speculation would help limit speculation and warehousing. Accordingly, V-band and Ka-band NGSO licensees will be subject to the bond-posting requirement and new milestones adopted above.[678] Finally, V-band applicants will be required to withdraw all but five GSO-like orbit location requests and one NGSO-like satellite system request. It is at best unlikely that the applicants requesting more than five GSO-like orbit locations will successfully complete construction of all the satellites they have requested. Thus, granting all those applicants' requests could result in warehousing spectrum until we cancel licenses at the time of the first milestone.

282. Finally, we will not consider fee refunds under the rule we adopt in this Order in the event that an applicant withdraws its application. The fee refund provision adopted in this Order is intended to enable an applicant in a first-come, first-served procedure to obtain a fee refund in cases where an earlier-filed application would make it impossible to grant its application.[679] There are no such pending applications here that we would consider pursuant to a first-come, first-served procedure.

283. We emphasize that some of the rules we apply to pending applications do not apply to licenses *granted* before this Order was adopted. Thus, licensees will not be required to post a bond for licenses they have been granted in the past. Similarly, nothing in this Order affects the milestones of licenses granted before we adopted this Order. However, we eliminate the anti-trafficking rule for current satellite licensees as well as for satellite license applications granted after this Order takes effect.

284. In summary, we will rely on procedures adopted in this Order in reviewing currently pending satellite applications, where appropriate, as discussed above. We direct the International Bureau to review pending satellite applications consistently with our discussion in this Order, and to adopt licensing Orders acting on those pending satellite applications consistent with rules and policies governing the spectrum, and in coordination with other potentially affected Bureaus and Offices.

VIII. NON-U.S.-LICENSED SATELLITES

A. Background

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[678] The milestones adopted in this Order above are consistent with those proposed by the Commission in the *Ka-band NGSO NPRM*, 17 FCC Rcd at 2820 (paras. 40-41).

[679] *See* Section VI.E.1.c. above. We note, however, that applicants who withdraw their applications will avoid the bond requirement. Moreover, there are currently provisions in the Commission's rules by which an applicant may apply for a fee refund. The new fee refund provision we adopt in this Order does not affect those provisions.

285. Under the terms of the World Trade Organization (WTO) Agreement on Basic Telecommunications Services (WTO Telecom Agreement),[680] 78 WTO signatories, including the United States, have made binding commitments to open their markets to foreign competition in satellite services.[681] Providing opportunities for non-U.S.-licensed satellites to deliver services in the United States brings U.S. consumers the benefits of enhanced competition.[682] This policy also promotes greater opportunities for U.S. companies to enter previously closed foreign markets, thereby stimulating a more competitive global satellite services market.[683]

286. In the *Notice*, the Commission described the framework it uses for considering requests for access to the U.S. market by non-U.S.-licensed satellite operators for satellite services.[684] The Commission's framework provides two procedures by which a non-U.S.-licensed satellite may provide service in the United States.[685] The first procedure allows the non-U.S. satellite operator to participate in a space station processing round through an earth station application seeking to communicate with the satellite or through a "letter of intent" to use its non-U.S. satellite to provide service in the United States. The non-U.S. licensed satellite must meet

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[680] The WTO came into being on January 1, 1995, pursuant to the Marrakesh Agreement Establishing the World Trade Organization (the Marrakesh Agreement). 33 I.L.M. 1125 (1994). The Marrakesh Agreement includes multilateral agreements on trade in goods, services, intellectual property, and dispute settlement. The General Agreement on Trade in Services (GATS) is Annex 1B of the Marrakesh Agreement. 33 I.L.M. 1167 (1994). The WTO Telecom Agreement was incorporated into the GATS by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 354 (1997) (Fourth Protocol to the GATS).

[681] Fourth Protocol to the GATS, 36 I.L.M. at 363. *See also DISCO II*, 12 FCC Rcd at 24102 (para. 19). The United States made market access commitments for fixed and mobile satellite services. It did not make market access commitments for Direct-to-Home (DTH) Service, Direct Broadcast Satellite Service (DBS), and Digital Audio Radio Service (DARS), and took an exemption from most-favored nation (MFN) treatment for these services as well. *See* Fourth Protocol to the GATS, 36 I.L.M. at 359. Generally, GATS requires WTO member countries to afford most-favored nation (MFN) treatment to all other WTO member nations. "With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country." GATS Article II, paragraph 1. Member nations are permitted to take "MFN exemptions," however, under certain circumstances specified in an annex to GATS. *See* GATS Annex on Article II Exemptions.

[682] *DISCO II*, 12 FCC Rcd at 24097 (para. 4).

[683] *DISCO II*, 12 FCC Rcd at 24099 (para. 10).

[684] We adopted this framework in *DISCO II*, 12 FCC Rcd 24094, *recon.* 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*), *recon. denied* 16 FCC Rcd 19794 (2001) (*DISCO II Second Reconsideration Order*). For a detailed summary of the *DISCO II* framework, we refer the reader to *DISCO II First Reconsideration Order*, 15 FCC Rcd at 7209-10 (paras. 4-5). In evaluating requests by foreign-licensed satellites to serve the U.S. market, the Commission adopted a public interest framework that considers the effect on competition in the United States, spectrum availability, eligibility and operating (*e.g.*, technical) requirements, and national security, law enforcement, foreign policy, and trade concerns. *See, e.g., Space Station Reform NPRM*, 17 FCC Rcd at 3889 n.165, *citing DISCO II First Reconsideration Order*, 15 FCC Rcd at 7209-10 (paras. 4-5).

[685] *DISCO II*, 12 FCC Rcd at 24174 (para. 188).